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Application No.: 10/043,657

REMARKS

Claims 13, 15-22, 27, and 28 are pending in this application. By this Amendment, claims 13 and 22 are amended to further clarify the recited subject matter. The above-indicated amendments are supported by the original disclosure and no new matter is added by these amendments. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

I. PRIOR ART REJECTIONS - 35 U.S.C. §103**A. CLAIMS 13, 15-17, 19-21, 27, AND 28 ARE PATENTABLE OVER BOXER IN VIEW OF PADAMSEE**

The Office Action rejected claims 13, 15-17, 19-21, 27, and 28 under 35 U.S.C. §103(a) as being unpatentable over Boxer et al. (U.S. Patent No. 4,526,298, hereinafter "Boxer") in view of Padamsee (U.S. Patent No. 5,398,848, hereinafter "Padamsee"). The Applicant traverses the rejection because the combined teachings of Boxer and Padamsee fail to teach all of the features recited in the rejected claims.

1. CLAIM 13 PATENTABLE OVER BOXER

For example, Boxer fails to teach or suggest at least a hydration system, comprising "a flexible pouch including a plurality of layers, wherein said plurality of layers are all permanently joined together to form an inner compartment and at least one outer compartment, wherein said inner compartment and said at least one outer compartment share a common layer, said at least one outer compartment being at least partially filled with a thermal capacitance medium, and the at least one inner compartment for being filled with a liquid for consumption" (emphasis added), as recited in amended claim 13.

In contrast, Boxer merely discloses a hydration system that includes a refillable flexible liquid container or bag that is suspended from the shoulders with the weight of the liquid disposed on a centered position at the anatomic pivot point in the small of the back of the user. A trigger-actuated pump type liquid dispenser is attached to the bottom of the bag by a kink-free flexible coiled tube. The dispenser includes a nozzle that is adjustable between "stream" and "spray" positions. In a modification the walls of the container are insulated in order to maintain the temperature of the contents at a desired level. (See Abstract of Boxer)

As further disclosed in Boxer, the bag may include "a layer of suitable insulation 80 between an inner layer 82 of the wall of bag 78 and an outer layer 84 thereof. Such an

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insulated bag 78 serves to maintain a desired liquid temperature ...". (See Col 4, lines 55-60 of Boxer)

Furthermore, as indicated in the Office Action, Boxer fails to teach or suggest a thermal capacitance medium in the at least one outer compartment. In fact, Boxer teaches the use of "insulation" and teaches away from the inclusion of a thermal capacitance medium. Characteristically, "insulation" is a material that reduces or prevents the transmission or transfer of heat or sound or electricity. (See Merriam-Webster Online Dictionary) According to The American Heritage® Dictionary of the English Language, Fourth Edition, something is "insulated" to "prevent the passage of heat, electricity, or sound into or out of, especially by surrounding with a nonconducting material".

Therefore, as taught in Boxer, the insulation between the inner layer of the wall of the bag and the outer layer merely functions to prevent the passage of heat into or out of the contents of the bag and attempts to maintain the original temperature of the liquid by surrounding the wall of the bag with a nonconducting material.

Thus, the insulation taught in Boxer can only attempt to passively maintain the temperature of an enclosed liquid. The insulation of Boxer cannot itself be heated or cooled to actively maintain, or even alter, the temperature of the liquid.

Thus, Boxer fails to teach the claimed subject matter of amended claim 13 and actually teaches away from a hydration system, comprising "a flexible pouch including a plurality of layers, wherein said plurality of layers are all permanently joined together to form an inner compartment and at least one outer compartment, wherein said inner compartment and said at least one outer compartment share a common layer, said at least one outer compartment being at least partially filled with a thermal capacitance medium, and the at least one inner compartment for being filled with a liquid for consumption" (emphasis added), as recited in amended claim 13.

2. THERE IS NO MOTIVATION TO COMBINE THE TEACHINGS OF BOXER AND PADAMSEE IN THE PARTICULAR MANNER CLAIMED

Obviousness, under §103, can only be established by combining or modifying the teachings of prior art references to produce the claimed invention if there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art at the time of the invention. "The test for an implicit showing is what the combined teachings,

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knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.” In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also In re Lee, 277 F.3d 1338, 1342-44, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002) (discussing the importance of relying on objective evidence and making specific factual findings with respect to the motivation to combine references); In re Rouffet, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) (The combination of the references taught every element of the claimed invention, however without a motivation to combine, a rejection based on a prima facie case of obvious was held improper.); In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990)

A statement that modifications of the prior art to meet the claimed invention would have been obvious to one of ordinary skill of the art because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references. Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). See also In re Kotzab, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000)

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984) (Claimed device was a blood filter assembly for use during medical procedures wherein both the inlet and outlet for the blood were located at the bottom end of the filter assembly, and wherein a gas vent was present at the top of the filter assembly. The prior art reference taught a liquid strainer for removing dirt and water from gasoline and other light oils wherein the inlet and outlet were at the top of the device, and wherein a pet-cock (stopcock) was located at the bottom of the device for periodically removing the collected dirt and water. The

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reference further taught that the separation is assisted by gravity. The Board concluded the claims were prima facie obvious, reasoning that it would have been obvious to turn the reference device upside down. The court reversed, finding that if the prior art device was turned upside down it would be inoperable for its intended purpose because the gasoline to be filtered would be trapped at the top, the water and heavier oils sought to be separated would flow out of the outlet instead of the purified gasoline, and the screen would become clogged.). See MPEP 2143.01.

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); Schenck v. Nortron Corp., 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983)

A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)

When the teachings of Boxer and Padamsee are viewed in light of the standard for a proper §103 rejection, it becomes apparent that there is no motivation to combine the teachings of Boxer and Padamsee in the particular manner claimed.

For example, Boxer discloses a hydration system that includes a refillable flexible liquid container or bag that is suspended from the shoulders with the weight of the liquid disposed on a centered position at the anatomic pivot point in the small of the back of the user. A trigger-actuated pump type liquid dispenser is attached to the bottom of the bag by a kink-free flexible coiled tube. The dispenser includes a nozzle that is adjustable between "stream" and "spray" positions. (See Abstract of Boxer)

Additionally, the container or bag of Boxer is specifically designed such that it is flexible and "reduces in bulk with the consumption of the contents". (See Col. 2, lines 18-19 of Boxer)

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In stark contrast, the portable liquid container of Padamsee includes a pair of opposing rigid walls connected to each other by a second pair of resilient, collapsible bellows-type side walls that allow a liquid to be ejected from the portable liquid container, from a nozzle, in the form of a jet, by displacing the rigid walls of the liquid containment portion towards each other (squeezing of the liquid containment portion). (See Abstract, Col. 2, lines 17-24, and Col. 3, lines 10-11 and lines 30-34 of Padamsee)

The portable liquid container of Padamsee also includes a separate, non-rigid, textile pouch, having thermally insulated flexible walls. In this manner, the liquid containment portion can be removed from the textile pouch and placed in a freezer for freezing the liquid contents of the liquid containment portion. (See Abstract and Col. 2, lines 12-13 of Padamsee)

Thus, as taught in Boxer, the hydration system includes a single, non-separable, container or bag that is specifically designed to be flexible enough to reduce in bulk with the consumption of the contents. The liquid is dispensed remote from the container or bag via a flexible coiled tube and a trigger-actuated pump.

In stark contrast, the portable liquid container of Padamsee includes a portable liquid container having a pair of opposing rigid walls connected by a second pair of collapsible bellows-type side walls that allow a liquid to be ejected from a nozzle of the portable liquid container when the container is squeezed. Another feature of the Padamsee container is that the liquid containment portion can be removed from a textile pouch and placed in a freezer for freezing the liquid contents of the liquid containment portion.

Thus, the portable liquid container of Padamsee is designed to include rigid walls and have liquid dispensed directly from the container, not include a completely flexible container or bag that dispensed liquid remote from the container or bag.

Obviously, there would have been no motivation to combine the teachings of the Boxer and the Padamsee references. In order to combine the Boxer bag with the Padamsee liquid container, the flexible bag of Boxer (the primary reference) would have to be redesigned and replaced with a rigid bag.

Additionally, the Boxer bag would not have been modified by one of ordinary skill in the art to include the Padamsee portable liquid container because the Padamsee portable liquid container is designed to dispense a contained liquid directly from the container into the user's mouth when the container is squeezed, while the Boxer bag is designed to dispense

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liquid remote from the bag (squeezing the Boxer bag would not result in liquid being dispensed).

Any of these changes suggested by a combination of the Boxer and Padamsee references, would require a substantial reconstruction and redesign of the elements shown in Boxer as well as a change in the basic principle under which the Boxer construction was designed to operate, things that are specifically prohibited under a proper §103, obviousness rejection.

Thus, it is evident that the suggested combination of the Boxer and Padamsee references would require a substantial reconstruction and redesign of the elements shown in Boxer as well as a change in the basic principle under which the Padamsee construction was designed to operate that would defeat the object of the Padamsee invention, things that are specifically prohibited under a proper §103, obviousness rejection.

Therefore, an artisan of ordinary skill in the art at the time of invention, with no knowledge of the claimed invention, would not have had any motivation to combine the teachings of Boxer and Padamsee.

3. EVEN IF COMBINED, CLAIM 13 PATENTABLE OVER BOXER IN VIEW OF PADAMSEE

Notwithstanding the foregoing, if there was a proper motivation to combine the Boxer and Padamsee references, the combined teachings of Boxer and Padamsee still fail to teach all of the features recited in Claims 13, 15-17, 19-21, 27, and 28.

For example, as discussed above and as indicated in the Office Action, Boxer fails to teach or suggest a thermal capacitance medium in the at least one outer compartment. Instead, Boxer teaches the use of "insulation" between the inner and outer layers of the wall of the bag, which can only attempt to passively maintain the temperature of an enclosed liquid. The insulation of Boxer cannot itself be heated or cooled to actively maintain, or even alter, the temperature of the liquid.

The inclusion of Padamsee fails to overcome the deficiencies of Boxer. Padamsee merely discloses a portable liquid container that includes at least one opening that allows a freezable pack to be inserted between the wall of the flexible pouch and the rigid wall of the liquid containment portion to regulate the temperature of the contents of the liquid containment portion. (See Abstract and Col. 4, lines 44-63 of Padamsee)

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As further described in Padamsee, one of the objects of the portable liquid container is to provide a portable liquid container that allows squeezing so as to eject its contents through a nozzle in the form of a jet, directly into the user's mouth, allowing hygienic use by several users, and allowing non-contact drinking against gravity. (See Col. 2, lines 17-24 of Padamsee)

The Office Action proffers that it would have been obvious to modify the dispenser of Boxer by replacing insulation with a thermal capacitance medium in a manner as taught by Padamsee to obtain the benefit of further cooling the dispensed liquid. This is not the case.

In fact, if the hydration system of Boxer were to be modified to accept the freezable pack taught in Padamsee, the resulting modified Boxer water container would require that an additional, openable pouch be formed in Boxer's flexible bag so that the freezable pack could be removably inserted.

The flexible bag and freezable pack of the resulting Boxer/Padamsee water container would still each have separate layers, the layer surrounding the removable, freezable pack, and the layer separating the flexible pouch and the liquid containment portion.

Since the teachings of Padamsee fail to overcome the deficiencies of Boxer, the teachings of Boxer and Padamsee, either alone or in combination, fail to teach or suggest (and actually teach away from) a hydration system, comprising "a flexible pouch including a plurality of layers, wherein said plurality of layers are all permanently joined together to form an inner compartment and at least one outer compartment, wherein said inner compartment and said at least one outer compartment share a common layer, said at least one outer compartment being at least partially filled with a thermal capacitance medium, and the at least one inner compartment for being filled with a liquid for consumption" (emphasis added), as recited in amended claim 13.

Therefore, Applicant respectfully submits that independent claim 13 is patentable over Boxer in view of Padamsee. Likewise, dependent claims 15-17, 19-21, 27, and 28 are also patentable over Boxer in view of Padamsee by virtue of their direct dependence from claim 13, for the reasons discussed above, and for the additional feature(s) it recites. Thus, claims 13, 15-17, 19-21, 27, and 28 is allowable and withdrawal of the rejection of this claim under 35 U.S.C. §103 is respectfully requested.

**B. CLAIM 18 IS PATENTABLE OVER BOXER IN VIEW OF PADAMSEE AND
FURTHER IN VIEW OF VAN TURNHOUT**

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The Office Action rejected claim 18 under 35 U.S.C. §103(a) as being unpatentable over Boxer in view of Padamsee and further in view of Van Turnhout (U.S. Patent No. 6,044,201, hereinafter "Van Turnhout"). The Applicant traverses the rejection because the combined teachings of Boxer, Padamsee, and Van Turnhout fail to teach all of the features recited in the rejected claims.

For example, as discussed above with respect to claims 13, 15-17, 19-21, 27, and 28, the teachings of Boxer and Padamsee, either alone or in combination, fail to teach or suggest (and actually teach away from) a hydration system, comprising "a flexible pouch including a plurality of layers, wherein said plurality of layers are all permanently joined together to form an inner compartment and at least one outer compartment, wherein said inner compartment and said at least one outer compartment share a common layer, said at least one outer compartment being at least partially filled with a thermal capacitance medium, and the at least one inner compartment for being filled with a liquid for consumption" (emphasis added), as recited in amended claim 13.

Furthermore, as indicated in the Office Action, the teachings of Boxer and Padamsee, either alone or in combination, fail to teach or suggest that the gel thermal capacitance medium is a cooling and heating medium. Thus, teachings of Boxer and Padamsee, either alone or in combination, fail to teach the claimed subject matter of original claim 18.

The inclusion of Van Turnhout fails to overcome the deficiencies of the combine teachings of Boxer and Padamsee. Van Turnhout merely discloses a device for storing and gradually dispensing heat or cold, which includes a container having a partially heat-conducting wall enclosing a space with material having a high heat capacity including a semisolid hydrogel formed by a crosslinked hydrophilic polymer containing 90-99.5% of water, based on the sum of polymer and water. (See Abstract of Van Turnhout)

As further described in Van Turnhout, the device can be used for the purpose of keeping parts of the human or animal body warm, in the form of a bottle, cylinder, blanket, or bed. The device may also serve as a heat source for other materials, such as hair (rollers), food, plates (catering), and the like. The Van Turnhout device can be used not only as a chargeable source of heat but also as a source of cold, for example to be used for cooling drinks or other comestibles, or for medical applications. Cool-down can, for example, be affected in a freezer compartment. The device may have various forms such as a cylinder, block, plate and the like and hold varying capacities. (See Col. 4, Lines 5-20 of Van Turnhout)

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Thus, the teachings of Van Turnhout fail to teach or suggest (and actually teach away from) a hydration system, comprising “a flexible pouch including a plurality of layers, wherein said plurality of layers are all permanently joined together to form an inner compartment and at least one outer compartment, wherein said inner compartment and said at least one outer compartment share a common layer, said at least one outer compartment being at least partially filled with a thermal capacitance medium, and the at least one inner compartment for being filled with a liquid for consumption” (emphasis added), as recited in amended claim 13, and fail to overcome the deficiencies of Padamsee.

In fact, if the hydration system of Boxer were to be modified to include the freezable pack taught in Padamsee and device taught in Van Turnhout, the resulting water container would still require that an additional, openable pouch be formed in Boxer’s flexible bag so that the freezable pack or device could be removably inserted. Furthermore, the flexible bag and freezable pack/device of the resulting Boxer/Padamsee/Van Turnhout water container would still each have separate layers, the layer surrounding the removable, freezable pack, and the layer separating the flexible pouch and the liquid containment portion.

Thus, the teachings of Van Turnhout fail to teach or suggest the claimed features of the hydration system recited in at least independent claim 13, and fail to overcome the deficiencies of the combine teachings of Boxer and Padamsee.

Since the teachings of Van Turnhout fail to overcome the deficiencies of Padamsee, the teachings of Boxer, Padamsee, and/or Van Turnhout, either alone or in combination, fail to teach or suggest (and actually teach away from) a hydration system, comprising “a flexible pouch including a plurality of layers, wherein said plurality of layers are all permanently joined together to form an inner compartment and at least one outer compartment, wherein said inner compartment and said at least one outer compartment share a common layer, said at least one outer compartment being at least partially filled with a thermal capacitance medium, and the at least one inner compartment for being filled with a liquid for consumption” (emphasis added), as recited in amended claim 13.

Furthermore, the teachings of Boxer, Padamsee, and Van Turnhout, either alone or in combination, fail to teach or suggest (and actually teach away from) a hydration system, “wherein said medium consists of a heating medium”, as recited in original claim 18.

Therefore, Applicant respectfully submits that independent claim 13 is patentable over Boxer in view of Padamsee and further in view of Van Turnhout. Likewise, dependent claim 18 is also patentable over Boxer in view of Padamsee and further in view of Van

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Turnhout by virtue of its direct dependence from claim 13, for the reasons discussed above, and for the additional feature(s) it recites. Thus, claim 18 is allowable and withdrawal of the rejection of this claim under 35 U.S.C. §103 is respectfully requested.

**C. CLAIM 22 IS PATENTABLE OVER BOXER IN VIEW OF PADAMSEE AND
FURTHER IN VIEW OF MOTSENBOCKER**

The Office Action rejected claim 22 under 35 U.S.C. §103(a) as being unpatentable over Boxer in view of Padamsee and further in view of Motsenbocker (U.S. Patent No. 4,420,097, hereinafter "Motsenbocker"). The Applicant traverses the rejection because the combined teachings of Boxer, Padamsee, and Motsenbocker fail to teach all of the features recited in the rejected claims.

Applicant believes that an artisan of ordinary skill in the art at the time of invention, with no knowledge of the claimed invention, would not have had any motivation to combine the teachings of Boxer, Padamsee, and Motsenbocker. Notwithstanding the foregoing, if there was a proper motivation to combine the Boxer, Padamsee, and Motsenbocker references, the combined teachings of Boxer, Padamsee, and Motsenbocker still fail to teach all of the features recited in claim 22.

For example, Boxer fails to teach or suggest at least a hydration system, comprising "a flexible pouch including a plurality of layers, said plurality of layers all being permanently joined together to form an inner compartment and at least one outer compartment, wherein said inner compartment and said at least one outer compartment share a common layer; a conduit having an inlet and an outlet; and a pack including a housing portion and straps, wherein said inner compartment is for being filled with a drinking fluid, wherein said at least one outer compartment is at least partially filled with a thermal capacitance medium, wherein said conduit inlet is in fluid communication with said compartment for drinking fluid, and said outlet is capped by a valve, said valve being a bite-valve articulable by the jaws of a user, wherein said drinking fluid compartment is in fluid communication with a sealable opening for filling said drinking fluid compartment, and wherein said flexible pouch is receivable within said housing portion of said pack" (emphasis added), as recited in amended claim 22.

In contrast, Boxer merely discloses a hydration system that includes a refillable flexible liquid container or bag that is suspended from the shoulders with the weight of the liquid disposed on a centered position at the anatomic pivot point in the small of the back of

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the user. A trigger-actuated pump type liquid dispenser is attached to the bottom of the bag by a kink-free flexible coiled tube. The dispenser includes a nozzle that is adjustable between "stream" and "spray" positions. In a modification the walls of the container are insulated in order to maintain the temperature of the contents at a desired level. (See Abstract of Boxer)

As further disclosed in Boxer, the bag may include "a layer of suitable insulation 80 between an inner layer 82 of the wall of bag 78 and an outer layer 84 thereof. Such an insulated bag 78 serves to maintain a desired liquid temperature ...". (See Col 4, lines 55-60 of Boxer)

Furthermore, as indicated in the Office Action, Boxer fails to teach or suggest a thermal capacitance medium in the at least one outer compartment. In fact, Boxer teaches the use of "insulation" and teaches away from the inclusion of a thermal capacitance medium. Characteristically, "insulation" is a material that reduces or prevents the transmission or transfer of heat or sound or electricity. (See Merriam-Webster Online Dictionary) According to The American Heritage® Dictionary of the English Language, Fourth Edition, something is "insulated" to "prevent the passage of heat, electricity, or sound into or out of, especially by surrounding with a nonconducting material".

Therefore, as taught in Boxer, the insulation between the inner layer of the wall of the bag and the outer layer merely functions to prevent the passage of heat into or out of the contents of the bag and attempts to maintain the original temperature of the liquid by surrounding the wall of the bag with a nonconducting material.

Thus, the insulation taught in Boxer can only attempt to passively maintain the temperature of an enclosed liquid. The insulation of Boxer cannot itself be heated or cooled to actively maintain, or even alter, the temperature of the liquid.

Thus, Boxer fails to teach the claimed subject matter of amended claim 22 and actually teaches away from a hydration system, comprising "a flexible pouch including a plurality of layers, said plurality of layers all being permanently joined together to form an inner compartment and at least one outer compartment, wherein said inner compartment and said at least one outer compartment share a common layer; a conduit having an inlet and an outlet; and a pack including a housing portion and straps, wherein said inner compartment is for being filled with a drinking fluid, wherein said at least one outer compartment is at least partially filled with a thermal capacitance medium, wherein said conduit inlet is in fluid communication with said compartment for drinking fluid, and said outlet is capped by a valve, said valve being a bite-valve articulable by the jaws of a user, wherein said drinking

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fluid compartment is in fluid communication with a sealable opening for filling said drinking fluid compartment, and wherein said flexible pouch is receivable within said housing portion of said pack" (emphasis added), as recited in amended claim 22.

As discussed above, the inclusion of Padamsee fails to overcome the deficiencies of Boxer. Padamsee merely discloses a portable liquid container that includes at least one opening that allows a freezable pack to be inserted between the wall of the flexible pouch and the rigid wall of the liquid containment portion to regulate the temperature of the contents of the liquid containment portion. (See Abstract and Col. 4, lines 44-63 of Padamsee)

As further described in Padamsee, one of the objects of the portable liquid container is to provide a portable liquid container that allows squeezing so as to eject its contents through a nozzle in the form of a jet, directly into the user's mouth, allowing hygienic use by several users, and allowing non-contact drinking against gravity. (See Col. 2, lines 17-24 of Padamsee)

In fact, if the hydration system of Boxer were to be modified to accept the freezable pack taught in Padamsee, the resulting modified Boxer water container would require that an additional, openable pouch be formed in Boxer's flexible bag so that the freezable pack could be removably inserted.

The flexible bag and freezable pack of the resulting Boxer/Padamsee water container would still each have separate layers, the layer surrounding the removable, freezable pack, and the layer separating the flexible pouch and the liquid containment portion.

Since the teachings of Padamsee fail to overcome the deficiencies of Boxer, the teachings of Boxer and Padamsee, either alone or in combination, fail to teach or suggest (and actually teach away from) a hydration system, comprising "a flexible pouch including a plurality of layers, said plurality of layers all being permanently joined together to form an inner compartment and at least one outer compartment, wherein said inner compartment and said at least one outer compartment share a common layer; a conduit having an inlet and an outlet; and a pack including a housing portion and straps, wherein said inner compartment is for being filled with a drinking fluid, wherein said at least one outer compartment is at least partially filled with a thermal capacitance medium, wherein said conduit inlet is in fluid communication with said compartment for drinking fluid; and said outlet is capped by a valve, said valve being a bite-valve articulable by the jaws of a user, wherein said drinking fluid compartment is in fluid communication with a sealable opening for filling said drinking

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fluid compartment, and wherein said flexible pouch is receivable within said housing portion of said pack" (emphasis added), as recited in amended claim 22.

The inclusion of Motsenbocker fails to overcome the deficiencies of the combine teachings of Boxer and Padamsee. Motsenbocker merely discloses a portable liquid dispenser with a carrying case that includes a liquid container "where means are provided for dispensing the liquid at a location remote from the container and where liquids can be cooled by an internal supply of ice without dilution of the liquid contents". (See Col. 1, lines 43-45 of Motsenbocker)

Motsenbocker's liquid container includes an internal compartment formed within the container. When cool liquids are carried in the Motsenbocker dispenser, an internal sack with a freezable liquid may be utilized to economically and efficiently provide the necessary cooling. (See Col. 2, lines 8-14 and Figs. 3 and 4 of Motsenbocker)

Furthermore, as disclosed in Motsenbocker, the compartment containing a freezable liquid is a completely sealed, separate compartment that is wholly housed within the liquid container. Because the liquid stored in the container is free to move within portions of the container, liquid can move back and forth across the surfaces of the internal compartment and therefore a direct heat transfer relationship is established whereby the liquid in the internal compartment cools the liquid in container. (See Col. 3, lines 23-33 of Motsenbocker)

In fact, the compartment containing the freezable liquid in Motsenbocker, because it is wholly housed within the liquid container, is actually robbing storage volume from the liquid container.

Thus, the teachings of Motsenbocker fail to teach or suggest (and actually teach away from) a hydration system, comprising "a flexible pouch including a plurality of layers, said plurality of layers all being permanently joined together to form an inner compartment and at least one outer compartment, wherein said inner compartment and said at least one outer compartment share a common layer; a conduit having an inlet and an outlet; and a pack including a housing portion and straps, wherein said inner compartment is for being filled with a drinking fluid, wherein said at least one outer compartment is at least partially filled with a thermal capacitance medium, wherein said conduit inlet is in fluid communication with said compartment for drinking fluid, and said outlet is capped by a valve, said valve being a bite-valve articulable by the jaws of a user, wherein said drinking fluid compartment is in fluid communication with a sealable opening for filling said drinking fluid compartment, and wherein said flexible pouch is receivable within said housing portion of said pack"

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(emphasis added), as recited in amended claim 22, and fail to overcome the deficiencies of Padamsee.

In fact, if the hydration system of Boxer were to be modified to include the freezable pack taught in Padamsee and the portable liquid dispenser taught in Motsenbocker, the resulting water container would still require either an additional, openable pouch be formed in Boxer's flexible bag so that the freezable pack or device could be removably inserted, and/or separate layers, the layer surrounding the freezable pack or liquid, and the layer separating the flexible pouch and the liquid containment portion.

Thus, the teachings of Motsenbocker fail to teach or suggest the claimed features of the hydration system recited in at least independent claim 22, and fail to overcome the deficiencies of the combine teachings of Boxer and Padamsee.

Since the teachings of Motsenbocker fail to overcome the deficiencies of Padamsee, the teachings of Boxer, Padamsee, and/or Motsenbocker, either alone or in combination, fail to teach or suggest (and actually teach away from) a hydration system, comprising "a flexible pouch including a plurality of layers, said plurality of layers all being permanently joined together to form an inner compartment and at least one outer compartment, wherein said inner compartment and said at least one outer compartment share a common layer; a conduit having an inlet and an outlet; and a pack including a housing portion and straps, wherein said inner compartment is for being filled with a drinking fluid, wherein said at least one outer compartment is at least partially filled with a thermal capacitance medium, wherein said conduit inlet is in fluid communication with said compartment for drinking fluid, and said outlet is capped by a valve, said valve being a bite-valve articulable by the jaws of a user, wherein said drinking fluid compartment is in fluid communication with a sealable opening for filling said drinking fluid compartment, and wherein said flexible pouch is receivable within said housing portion of said pack" (emphasis added), as recited in amended claim 22.

Therefore, Applicant respectfully submits that independent claim 22 is patentable over Boxer in view of Padamsee and further in view of Motsenbocker. Thus, claim 22 is allowable and withdrawal of the rejection of this claim under 35 U.S.C. §103 is respectfully requested.

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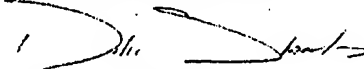
Application No.: 10/043,657

CONCLUSION

Based on the foregoing amendments and remarks, Applicant respectfully submits that claims 13, 15-22, 27, and 28 are directed to allowable subject matter and that the application is in condition for allowance. Accordingly, prompt reconsideration and allowance of the application with these claims is respectfully requested.

However, if the Examiner believes there is anything further necessary to place this application in better condition for allowance, Applicant requests the Examiner telephone Applicant's undersigned representative at the number listed below.

Respectfully submitted,



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Date: July 30, 2007

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